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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SANTIAGO MAURICIO MORALES-
GARCIA,

Defendant and Appellant.

E049291

(Super.Ct.No. FCH800482)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gerard S. Brown,
Judge. Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant, Santiago Mauricio Morales-Garcia, pled guilty to second-degree
murder and the trial court sentenced him to 15 years to life in prison. In this appeal,

defendant challenges the trial court's decision denying his motion to withdraw the guilty plea. As discussed below, we affirm the trial court's ruling and the judgment.

SUMMARY OF FACTS AND PROCEDURE

On August 24, 2008, sheriff's deputies found defendant lying on his back on the floor of his girlfriend's kitchen, suffering from multiple stab wounds. Defendant's girlfriend was lying on her back on the floor next to him, deceased, with multiple stab wounds to her abdomen and chest. Defendant had 27 superficial stab wounds, none of which were defensive wounds, and which appeared to have been self-inflicted.

On August 26, 2008, the People charged defendant with murder (Pen. Code, § 187, subd. (a))¹ and alleged the personal use of a deadly and dangerous weapon, a knife, in the commission of the murder, the use of which was not an element of the crime of murder, within the meaning of section 12022, subdivision (b)(1), causing the murder charge to be alleged as a serious felony within the meaning of section 1192.7, subdivision (c)(23).

On August 27, 2008, defendant pled not guilty. On April 17, 2009, appellant withdrew his "not guilty" plea and pled guilty, with the stipulation that the charge was second-degree murder. The trial court ordered the allegations to be dismissed at sentencing.

On May 22, 2009, defense counsel informed the trial court that defendant wanted to withdraw his guilty plea. The court relieved the retained defense counsel and

¹ All further statutory references are to the Penal Code unless otherwise indicated.

appointed the public defender. On June 16, 2009, defendant filed a motion to withdraw his guilty plea on the ground that his prior counsel had told him he would be out of prison in fifteen years and that the phrase “to life” would have no effect on the amount of time he would serve. Defendant is a Spanish speaker and his former counsel spoke to him in Spanish. Defendant also alleged that, when his court-appointed interpreter was reading him the plea agreement, he asked the interpreter about the inclusion of the phrase “to life” in the plea agreement. Defendant’s counsel was not present at that time and defendant does not know if the interpreter relayed this question to counsel. The People filed an opposition on June 17, 2009.

On August 20, 2009, the trial court held an evidentiary hearing on defendant’s motion. At the hearing, defendant testified that his attorney had told him, in Spanish, that he would be receiving a sentence of 15 years, plus credits to reduce the term to about 8 years, and that the phrase “to life” would not affect defendant. Defendant stated that he only realized he would be serving an indeterminate term when he was interviewed by the probation department. Defendant also testified that, after he had questioned the interpreter about the meaning of “15 to life,” he again asked his counsel to explain, and counsel again told him he would be serving 15 years, minus credits, for about eight years actually spent in prison.

Defendant’s prior counsel then testified that “Spanish is my mother tongue.” He also testified that he explained to defendant “at least four times” in Spanish that he would serve a minimum of 15 years and then it would be up to the parole board to determine whether and when he would be released. He also testified that, prior to defendant

entering the plea, he explained to defendant that “to life” meant he might never get out of prison. He also explained the same to defendant’s family.

The interpreter testified that, in April 17, 2009, he went over the plea agreement with defendant prior to defendant entering his guilty plea. Defendant asked him about whether “15 to life” meant it was going to be a 15-year sentence or a life sentence (“he asked me if it was going to be 15 or life”). The interpreter testified that he told defendant he would have to ask his attorney that question. The interpreter did not tell the attorney about defendant’s question. The interpreter testified that, when defendant was in court at the plea hearing, the interpreter translated into Spanish the trial court’s explanation that the sentence would be 15 years to life in state prison. The interpreter also testified that, while he was translating to defendant what the trial court was saying, defendant asked him the same question he had previously asked him—“is it 15 years or life.” The interpreter indicated to defendant that defendant needed to be quiet so the interpreter could finish translating what the trial court had said. The interpreter testified that he and defendant did not subsequently discuss this issue and he was not sure whether counsel was standing close enough to overhear their exchange.

At the close of the hearing, the trial court summarized the testimony and evidence. The court stated that “I think you have pretty much an open-and-shut case” up until the interpreter testified. The court discussed the effect of defendant’s first discussion with the interpreter about the sentence, but concluded that it was up to defendant to talk to his counsel if he had any questions. The court noted that it believed the former defense counsel’s testimony that he had explained the sentence to defendant several times. The

court also discussed the effect of the interpreter's failure to interrupt the court during the plea hearing to inform the court that defendant had asked about the sentence. However, the court noted that it clearly explained to defendant during that hearing that defendant might spend the rest of his life in prison. The court then concluded that, "based upon the totality of the circumstances," no one ever told defendant he would spend less than 15 years in prison. The court denied defendant's motion. The court then sentenced defendant to 15 years to life, with 361 days of credit for actual time served, and no conduct credits.

On September 23, 2009, defendant filed a notice of appeal and a request for a certificate of probable cause. The trial court granted the certificate on the same date.

DISCUSSION

We appointed counsel to represent defendant on appeal. Appointed counsel on appeal has filed briefs under *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth the facts and procedural history, raising no specific issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief. On February 25, 2010, defendant filed a letter that serves as his supplemental brief. Defendant wrote the letter in Spanish and it was translated by an interpreter certified by the State of California. In the letter, defendant reiterates that his first lawyer never advised him that he would be sentenced to 15 years to life, but that he would only serve about seven or eight years after receiving "half" credits. In addition, pursuant to the

mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

“ “ “Issues of fact and credibility are questions [of fact] for the trial court, not this court. [Citation.] ‘The rule is clear that the power of the appellate courts begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.’ [Citation.]” [Citation.]’ [Citations.]” (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.) Here, the trial court specifically stated that it found defendant not credible, whereas it found defendant’s prior defense counsel to be credible. Our review of the record and of defendant’s supplemental brief reveals no reason to overturn the trial court’s findings of credibility and consequent order denying defendant’s motion to withdraw his guilty plea.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P.J.

We concur:

HOLLENHORST
J.

KING
J.